Special Law Day Edition

Section 3

The Daily Record

Monday, May 3, 1993

Monroe County's Business/Legal Daily Newspaper

LET US STAND TOGETHER

'We Must Keep the Dream Alive By Renewing Our Nation's Commitment to "Justice For All — All For Justice" '

FOR MORE THAN a century, the words "just for all" have echoed throughout classrooms across the nation. As 1992 marked the 100th anniversary of the writing of the Pledge of Allegiance, we Americans are reminded of a time when as children we stood together with our classmates and pledged allegiance to a flag and a country that has promised to provide us with "justice for all."

Yet as we look to our system of justice today, it is all too evident that we are still striving to obtain those promises of yesterday. We have the dream and the hope of one day living in a nation where all Americans have equal access to our justice system, where every American citizen, whether rich or poor, educated or uneducated, can afford legal representation, and where the appreciation of our system of justice is as important to the average citizen as it is to the average attorney.

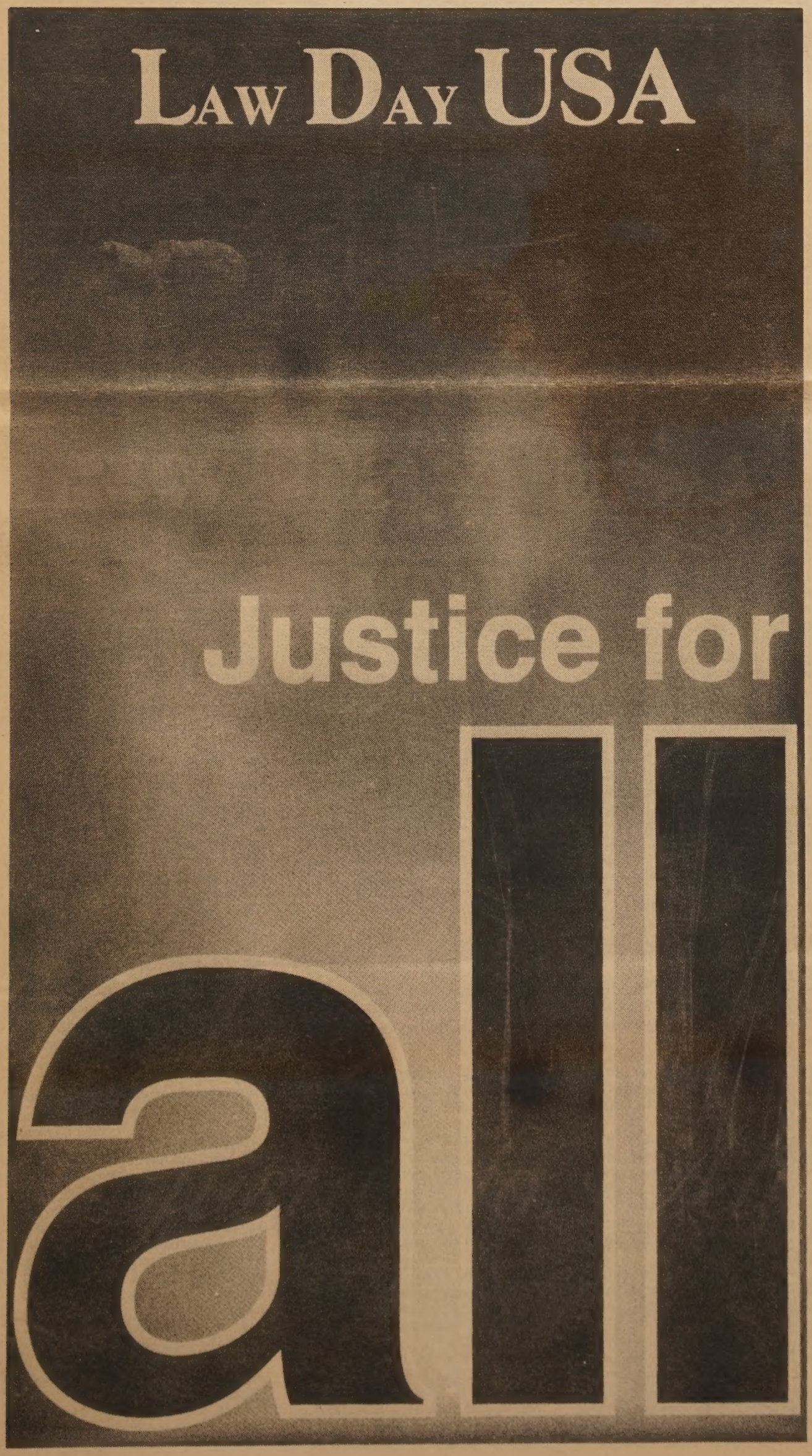
ALTHOUGH, TODAY we are living with a system where only 20% of the legal needs of the poor are being met and countless of other middle-income Americans go without needed legal services because they cannot afford them, some say that our system of justice is in a crisis, but we must keep the dream alive.

We must keep the dream alive by renewing our nation's commitment to "Justice For All — All For Justice."

THIS IS OUR Law Day message to all Americans. If we do not form groups of lawyers and nonlawyers alike, national coalitions of business, civic, labor and other leaders to help develop and propose workable solutions to the problems that plague our system ... if we do not strive for the protection and the rights of every American citizen ... if we do not realize that every American citizen shares in the responsibility to maintain and improve our system ... if we do not have all for justice, we can never have justice for all.

As a result of the many Law Day efforts have have been expanded into year-round programs, community based "Coalitions for Justice" are already in existence. What may have started as annual Law Day events, have developed into on-going community programs such as people's law schools, food and blood drives, free legal counsel, mock trials in schools, and outreach to special needs groups.

WE APPLAUD the collective cooperation among the many state and local bar associations, schools, churches, civic organizations, corporations, government bodies, and law enforcement groups for making the commitment to community coalitions in the national effort toward justice for all in America.



Gay Alliance Wins Judgment

City Property-Tax Exemption Held Improperly Denied

Justice Siracuse Also Rules City Liable for Attorney's Fees

A GAY RIGHTS group won a declaratory judgment last month against the City of Rochester for a property tax exemption for its community center after a state judge ruled the city had discriminated against the group because of its "membership and focus."

The decision, one of the first of its kind directed against a governmental body, also found the city violated federal equal protection rights in denying the exemption to the Gay Alliance of Genesee Valley by maintaining it was an advocacy group, thereby failing to qualify as an educational organization under Real Property Tax Law §420-a.

MONROE COUNTY Supreme Court Justice Andrew V. Siracuse wrote, "There is only one reasonable explanation for the [City] Assessor's denial of the GAGV application: That GAGV was denied a tax exemption because the Assessor (and the city) saw support, education and advocacy for the gay and lesbian community in a different light than it did support, education and advocacy" for other residents and community groups.

"Thus, the GAGV's application received discriminatory treatment on the basis of the character of its membership and the content of its speech, clear denials of its constitutional right," he ruled in **Gay Alliance v. City Assessor**.

THE CITY was handed two other setbacks. It was held liable for attorney's fees under 42 USC §1983, the civil rights law, and faces sanctions for its "clearly frivolous" efforts in bringing "last-minute discovery demands" after earlier stating it had no need for additional discovery.

The court said it was "hard to escape the suspicion that the demands were made in order to harass and prejudice the Alliance and to delay the resolution of this case."

THE COMPLETE opinion of Justice Siracuse follows:

STATE SUPREME Court: County of Monroe.

Gay Alliance of Genesee Valley, Inc., Plaintiff, v. City Assessor, City of Rochester, New York, Defendant. Index No. 8872/91.

APPEARANCES: Ellen M. Yacknin, Esq., (with Susan Ann Silverstein, Esq.), Attorneys for plaintiff Gay Alliance of Genesee Valley, Inc., 80 Highland Ave., Rochester, N.Y. 14620; Louis N. Kash, Corporation Counsel (Susan L. Hauser, Municipal Attorney, of counsel), Attorney for Defendant City Assessor, City of Rochester, 400A City Hall, 30 Church St., Rochester, N.Y. 14614.

DATED: April 6, 1993.

Memorandum Decision

ANDREW V. SIRACUSE, J. — The Gay Alliance of Genesee Valley, Inc. ("GAGV") is a non-profit membership organization devoted both to the needs of the homosexual community in the Rochester area and to furthering the understanding and acceptance of that community by the public as a whole. In March 1990, the GAGV purchased a building to house its offices and activities. It applied to the City of Rochester for a property tax exemption under Real Property Tax Law §420-a.

The City's rejection of that application is without foundation in law and can only be explained by the nature of the Alliance's membership and focus. It thus constitutes a violation of the GAGV's

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federal constitutional rights to equal protection and renders the City liable for attorneys' fees under 422 USC §1988. In addition, the City's last-minute discovery demands are so clearly frivolous that this Court orders a hearing on possible sanctions under 22 NYCRR §130-1.1.

FACTS

The Gay Alliance of Genesee Valley has among its purpose the eradication of homophobia, the delivery of unbiased health care, employment protection, social integration, full legal rights and protection, [and] personal and financial security for all (GAGV By-Laws and Constitution, preamble).

In furtherance of these aims it seeks to research and advance gay liberation and equal rights for persons of homosexual orientation, improve such people's quality of life and create a physical focus for the gay and lesbian community. It also furnishes advice and assistance for those discriminated against on the basis of sexual orientation, and educates the larger public about the civil rights of gay and lesbian citizens (GAGV Certificate of Incorporation). Its activities include regular social and education programs, a free newspaper, a speakers' bureau and a telephone hotline. Among its responses to the AIDS crisis are a series of safe sex workshops and support for survivors of those who have died of AIDS.

THE ALLIANCE was granted exemption from federal taxation on November 19, 1981, but the property tax question did not arise until it purchased a headquarters building on Atlantic Avenue in the City of Rochester, in March, 1990. On January 28, 1991, it applied to the City for a tax exemption under Real Property Tax Law §420-a. Given a choice on the application of checking "Religious," "Charitable," "Hospital," "Educational," or "Moral or mental improvement of men, women or children," it chose "Educational" as its purpose.

On March 8, 1991, the City Assessor denied the application. The rejection letter enclosed a memorandum from Municipal Attorney Susan Hauser, stating that educational exemptions were limited to applicants which "conduct organized instructional programs, with a curriculum, classes, and a faculty."

THE ALLIANCE brought an administrative appeal on March 22, 1991. A letter memorandum from its attorney asserted that the Alliance was tax-exempt because its activities fell within the broad interpretation of Real Property Tax Law §420-a set out by the Court of Appeals in **Matter of Symphony Space v Tishelman** (60 NY2d 33). The Board of Assessment Review conducted a hearing on March 26, 1991, at which time the then president of GAGV gave testimony.

In preparation for the decision the Municipal Attorney wrote another memorandum. Instead of maintaining, as it had done previously, that classes and curriculum were sine qua non for an educational exemption, the City now argued that there was a distinction between education and advocacy. In the **Symphony Space** case an informal, non-degree-granting institution was held to have an educational purpose. Once "learning is instigated by the teacher," however, the institution is no longer educational but advocacy-oriented; although the Alliance's activities "are informative and probably beneficial," **because those activities are driven by a specific point of view, a mission, a goal, a desire to cause social change, rather than a neutral and disinterested offering of knowledge for its own sake, the Gay Alliance does not *** qualify for tax exemption.**

On April 30, 1991, the City sent the GAGV a computer-generated letter denying a purported request to raise the property's assessed value from $50,000 to $72,500. After a telephone inquiry the City explained, in a letter dated August 22, 1991, that this notice, while containing "some inaccuracies," "did accurately state the Board's decision on the complaint, i.e., that the Board was not granting any exemption."

On August 24, 1991, the GAGV brought the present action. Originally framed as an Article 78, it was converted on request of the City to a declaratory judgment action. The City has not claimed that the letter of April 30, 1991, was a determination of the application and has not raised any issue as to the timeliness of this action.

PROCEDURAL HISTORY

THE ALLIANCE'S complaint asserted that it met the **Symphony Space** test for an exemption. As a second cause of action, it pointed to numerous tax-exempt groups with an advocacy focus, including the YWCA and several neighborhood groups, and argued that refusal to grant the Alliance's tax exemption was an unconstitutional denial of equal protection.

THE CITY'S answer raised two defenses: that the GAGV's claims to status as a charitable organization or one devoted to moral or mental improvement had not been presented, and that the assessor's decision was based on state law and created no equal protection issue.

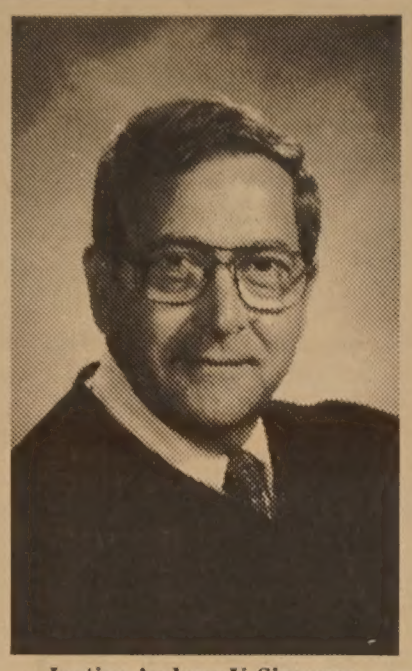
On October 15, 1992, the GAGV moved to amend its complaint to add a cause of action under the Federal Civil Rights Act, 42 USC §1983 and a consequent claim for attorneys' fees under 42 USC §1988. At the same time the GAGV moved for summary judgment.

THE CITY cross-moved for summary judgment dismissing the complaint on November 12, 1992. The City argued that the Alliance fell within none of the three separate relevant grounds set out in the Real Property Tax Law. In addition, the City claimed that its action could not be discriminatory because it was mandated by the Real Property Tax Law and because the City has an official policy against discrimination on the basis of sexual orientation.

On December 1, 1992, this Court denied both motions without prejudice to renew and returned the matter to the City for an explicit ruling on the Alliance's administrative complaint. That ruling, which was dated December 31, 1992, rejected the application without explanation.

THE ALLIANCE then renewed its motion to amend the complaint. At oral argument, on February 18, 1993, the City conceded that no further factual submissions are required, at least insofar as the property tax issue was concerned. By a decision dated February 19, 1993, subsequently converted into an order and entered February 26, 1993, this Court granted the Alliance's motion, rejecting the City's argument that it could only be liable under 42 USC §1983 for acts pursuant to official policy or custom. The City was duly served with the amended complaint.

THE CITY raised four affirmative defenses in its answer. Insofar as the City Assessor was being sued in his individual capacity, it asserted, he was protected by qualified immunity and was acting in good faith on a legal opinion by the municipal attorney. The City reiterated the "official policy or custom" argument rejected in this Court's decision of February 19, 1993, and raised once again the defense that no equal protection issue was created by an interpretation of the Real Property Tax Law.



Justice Andrew V. Siracuse

ALONG WITH its answer the City served the Alliance with demands for more financial information — tax returns and financial statements — and a demand to produce the current president of the GAGV for a deposition. The City did not allege a basis for these demands, the first discovery requests in the nineteen-month history of the case.

THE PRESENT decision arises from the Alliance's two motions of March 23, 1993, one for a protective order under CPLR 3103[1] and the other for summary judgment. The two motions will be considered in that order. In addition, the City, in papers filed literally at the last minute under CPLR 2214, has renewed its cross-motion for summary judgment and defended its discovery demands on the grounds that it needs more detailed information about the actual uses to which the Alliance puts its property and income.

Propriety of the City's Discovery Demands: While the CPLR encourages broad and prompt disclosure, a protective order may be warranted if necessary **to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts (CPLR 3103[a]).**

If the material requested is unnecessary (**Bandike Assoc. v B.B.M. Realty Corp.**, 55 AD2d 999), irrelevant (**Kaufman v Kaufman**, 125 AD2d 293; **Herscovit v County of Nassau**, 89 AD2d 598) or both (**Seltel, Inc. v Channel Communications**, 122 AD2d 628), a protective order may issue. The case for a protective order is especially strong when the demand for immaterial or unnecessary documents amounts to undue harassment (**Pearson v National Budgeting Systems**, 31 AD2d 792).

THE CITY'S discovery demands come at an unexpected time; this action has been pending for more than a year and a half, the City itself cross-moved for summary judgment on the unamended complaint, and the City's attorney has several times assured the Court that no further factual material was necessary to decide the issued raised therein — a position implicit in its earlier cross motion. Indeed, the City did not contest the factual affirmation submitted by the GAGV with its summary judgment motion, thus conceding these facts, and explicitly conceded the main points of the GAGV's case in its memorandum accompanying its cross-motion:

The City does not dispute that the GAGV is the owner of the subject parcel * that the parcel is used in furtherance of the GAGV's corporate purposes; that the GAGV is a bona-fide not-for-profit organization which performs a worthwhile community service; that there is no hidden commercial motive behind the GAGV's activities and no hidden profiteering by any involved individuals (Memorandum, at 2).**

SINCE THE GAGV is required to show that (1) it is organized exclusively for the purposes set out in Real Property Tax Law §420-a, (2) its property is used primarily in furtherance of these purposes, (3) no pecuniary profit (beyond reasonable compensation) enures to its officers or members and (4) the property is not used for commercial operations (**Matter of Nassau County Council Boy Scouts of America v Board of Assessors of the Town of Rockland**, 84 AD2d 862), it is clear that the City and the GAGV differ only on the legal effect of agreed-upon facts — that is, whether the purposes of the GAGV fall within section 420-a.

ALTHOUGH THE City's memorandum declined to address the GAGV's claim under 42 USC §1983, it is worth noting that the orginal complaint pleaded a cause of action for violation of the Alliance's rights to equal protection, and the City's motion was necessarily addressed to this claim as well.

The City, then, clearly stated and acted upon its belief that all necessary facts were before the Court as to the original complaint. What is more, the City had already been supplied with all financial information requested by the Assessor and the Board of Assessment Review, and had taken sworn testimony from the president of the Alliance at the March 26, 1991, hearing. Only special circumstances would justify the tardy demand for disclosure with respect to the issues raised in the original complaint, and the City alleges none.

IN THE POSTURE of this case, moreover, the City's demands are too late and rest only on conjecture and surmise. The City claims that it needs to determine the true nature of certain of the Alliance's activities: who calls the hotline and why, what uses the building's rooms are put to, the social component of the activities ostensibly educations, and similar questions. The City raises these concerns, though, in responding papers to a summary judgment motion in which the Alliance explained the nature of these activities — facts which the City apparently hopes to refute with material derived from the deposition. It is too late to do so.

Mere allegations that the Alliance's descriptions of its activities may be inaccurate are not the evidentiary facts necessary to defeat summary judgment (**see, Amatulli v Delhi Constr. Corp.**, 77 NY2d 525, 533).

In addition, summary judgment may not be withheld because of an alleged need for discovery when, as here, the opponent has failed to seek discovery when it had the opportunity to do so (**see, e.g., Guarino v Mohawk Containers Co.**, 59 NY2d 753, 754 [seventeen months' delay]) or on the basis of a mere hope or surmise that facts supporting the opponents' case might turn up in discovery (**see, First City Natl. Bank & Trust Co. v Heaton**, 165 AD2d 710, 712; **Kennerly v Campbell Chain Co.**, 133 AD2d 669, 670 [to delay summary judgment would sanction fishing expedition]).

In fact, while claiming in its latest papers that it needs further information to defeat the Alliance's claim, the City stated at oral argument that, as far as the tax exemption issue is concerned, it had nothing to add to the legal arguments made in its earlier papers. It is difficult to see how these two positions can be reconciled.

THE ADDITIONAL claim under 42 USC §§ 1983 and 1988 furnishes no other grounds for the demand. First of all, this claim proceeds from no facts not alleged in the original complaint that the GAGV was denied equal protection. Secondly, it is not clear how information about the Alliance's finances or obtainable from its president could shed light on the discriminatory character of the Assessor's actions; the Assessor based his decision on the material requested and submitted.

Furthermore, no discovery from the GAGV could support the new defenses raised by the City: qualified immunity, good faith, and failure to establish municipal policy or custom. These are the only additional issues raised in the current exchange of pleadings, and as to these issues the City's demands seek material that is clearly both immaterial and unnecessary.

THE ALLIANCE'S motion for a protective order is granted, with costs. However, this case presents circumstances which suggest that a stronger remedy than a protective order may be appropriate. The absence of a sound basis in law for these demands is obvious. Even more troubling, though, is their timing. The City was fully aware that the GAGV was preparing to renew its motion for summary judgment on the basis of the amended complaint, and it is hard to escape the suspicion that the demands were made in order to harass and prejudice the Alliance and to delay the resolution of this case. For these reasons a hearing will be ordered within the next 30 days, pursuant to 22 NYCRR §130-1.1, to determine if financial sanctions should be imposed (**see**, 22 NYCRR § 130-1.1 [c] [1], [2]). The Court will notify the Corporation Counsel's office of the time, place and format of the hearing (**see**, 22 NYCRR § 130-1.1 [d]).

GAGV's Entitlement To An Exemption Under RPTL 420-a: As noted above, the City concedes that the GAGV is a bona fide nonprofit organization that does work in the public interest. The only point on which the litigants part company is the interpretation of Real Property Tax Law §420-a (1) (a).

THAT SECTION sets out a legislative policy that certain property is entitled, as a matter of law, to exemption from taxation. Unlike property described in the permissive sections of the Real Property Tax Law, property that meets the test set out in section 420-a must be exempt. The City's references at oral argument to the tax burden placed on less affluent homeowners and to the Alliance's healthy financial status are not relevant to the issues before the court.

The section reads, in pertinent part:

Real property owned by a corporation or association organized

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City to Appeal Decision

THE CITY has decided to appeal the decision that it discriminated against the Gay Alliance of the Genesee Valley Inc. by denying it a property tax exemption.

Justice Andrew Siracuse ruled that the city must grant the exemption for the property at 179-183 Atlantic Ave. A strongly worded ruling chastised the city, saying it appeared that the exemption wasn't granted in part because the Alliance's membership consists of homosexuals.

"We're very surprised and very disturbed," the alliance's lawyer Ellen Yacknin said about the city's decision to appeal." Judge Siracuse said in the strongest of words that what the city is doing is wrong. The city should take his words to heart."

LOUIS N. KASH, THE CITY'S CORPORATION COUNSEL, said the city will appeal. The city has maintained that the property does not meet state standards for tax exemptions.

"The rationale (for the appeal) is we believe that the lower court has erred," Kash said. "The city does not discriminate against gays and lesbians and we believe that the question of tax exemption is a legitimate question to present to an appeals court."

Because of Siracuse's ruling, the city will receive a formal order requiring it to grant the tax exemption. The city then has 30 days to file a notice it plans to appeal. An appeal typically takes about eight months, Kash said.

YACKNIN MAINTAINS THAT THE appeal is a slap at the gay community. She said the city also appears willing to "waste taxpayers' money."

Justice Siracuse ordered the city to pay the alliance's legal fees, a bill that has not yet been completed. Siracuse also ordered that a hearing be held within the next month to decide whether fines should be slapped on the city for what he deemed as questionable legal conduct.

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or conducted exclusively for religious, charitable, hospital, educational or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes * shall be exempt from taxation ***.**

FOR THE PURPOSES of this action the relevant categories are charitable, educational and moral or mental improvement.

The City interprets this statute as setting out a series of discrete categories. An educational organization must provide organized instruction or disseminate knowledge upon the request of the learner. A charitable organization "provides a necessary commodity or service to needy persons" (Memorandum, 8). The final category, organizations promoting the moral or mental improvement of men, women or children, is restricted to groups like the YMCA, for whose benefit the language was added by L 1893, ch 498.

THE CITY maintains that the GAGV conducts no classes and expresses a viewpoint, thus failing to qualify as "educational"; it distributes no funds to the needy, unlike the neighborhood advocacy groups cited by the GAGV in its papers, and is thus not "charitable"; and it is not similar in any way to the YMCA, so cannot qualify as contributing to the "moral and mental improvement" of the public.

THIS ARGUMENT is fallacious. It is inconsistent with the statute's language, which exempts groups organized or conducted "for two or more *** purposes," and has repeatedly been rejected by the Court of Appeals in cases which the City itself cites and consistently mischaracterizes.

The City interprets **Matter of Symphony Space v Tishelman** (60 NY2d 33, **supra**) as extending the concept of "education" to include the peculiar needs of performing arts instruction. There is no language in the case amenable to such an interpretation. The Court of Appeals, in fact, explicitly addressed the very argument made by the City:

> In contrast with the approach taken by this court, Trial Term, in the present case, has taken a narrow and fragmentary view of the exemption. In rejecting petitioner's argument that it was organized for educational purposes, the court focused on the fact that Symphony Space was not approved by the Commissioner of Education, was not chartered by the Board of Regents, and does not have faculty or student enrollment. The court similarly rejected the exemption under the "moral or mental improvement" category, reasoning that the exemption was meant to cover only YMCA types of organizations and was not intended to cover the performing arts. However, this court has not made such requirements necessary before an institution qualifies for a tax exemption under those categories. In fact, rather than dissecting each exempt purpose, this court has indicated that the statute may encompass property used primarily for various and varied charitable and educational purposes and the moral or mental improvement of the citizenry (supra, 60 NY2d at 37, citations omitted, emphasis added).

EVEN IF Symphony Space might be shoehorned into the educational category — an attempt not sanctioned by the Court of Appeals' words — the City's interpretation of the statute would be inconsistent with the earlier Court of Appeals decision in **Mohonk Trust v Board of Assessors of Town of Gardiner** (47 NY2d 476), cited with approval in **Symphony Space**. The property at issue in **Mohonk Trust** was a wilderness reservation owned by a private trust.

The Court had no difficulty finding that the Trust land was **used primarily for an assortment of "charitable *** educational, [and] moral improvement of men, women or children" purposes *** (supra, 47 NY2d at 484, emphasis added).**

Yet no wilderness area could qualify under the City's "fragmentary" set of tests: no classes are held therein, no funds or goods are distributed by it to the needy, and there is no similarity between it and the YMCA.

This does not end the inquiry, however, for the burden is on the taxpayer to demonstrate entitlement to the exemption (**see, Matter of New York Botanical Garden v Assessors of Town of Washington**, 55 NY2d 328; **Matter of Nassau County Council Boy Scouts of America v Board of Assessors of the Town of Rockland**, 84 AD2d 862, **supra**), and the statutory requirements should be construed strictly against the taxpayer, although "an interpretation so literal and narrow that it defeats the exemption's settled purpose is to be avoided" (**Matter of Symphony Space v Tishelman**, 60 NY2d 33, 36, **supra**). Regardless of the weakness of the City's argument, the GAGV has the burden of proof.

SIMILAR organizations in New York City and Albany have received exemptions from property taxation, and while these decisions admittedly have no binding authority they suggest that the Alliance falls within the "educational, charitable, and moral or mental improvement" categories of section 420-a as understood in the light of the **Symphony Space** and **Mohonk Trust** cases. To the extent the Alliance is an advocacy group, as charged by the City, it advocates not homosexuality but the legitimate rights and needs of the gay and lesbian community, rights recognized by the City in its anti-discrimination ordinance. This is essentially an educational function.

These activities also serve to build tolerance and understanding between that community and the larger public, contributing to the moral and mental improvement of the entire community. The Alliance's AIDS-related work is also educational, on a topic of pressing importance to all. The telephone hotline and the outreach and support programs for gay and lesbian youth and minorities meet similar needs and, along with the AIDS-related programs, furnish important social services that might otherwise have to be met, if at all, through tax-funded social welfare agencies.

THAT CERTAIN of the GAGV's activities are clearly social or recreational does not defeat its claim, for it is well settled that "exclusive" means, in the context of the statute, "principal" or "primary" (**Mohonk Trust v Board of Assessors of Town of Gardiner**, 47 NY2d 476, 483, **supra**; **Matter of Nassau County Council Boy Scouts of America v Board of Assessors of the Town of Rockland**, 84 AD2d 862, **supra**). The principal or primary purpose of the Alliance is to build understanding, eliminate discrimination, and provide counselling and support. That similar activities fall within the exempt categories has been recognized by the City in granting exemptions to neighborhood advocacy organizations. Group 14621, Inc., for example, is exempt; it seeks, **inter alia**

(a) To further the interests of the inhabitants [of the 14621 neighborhood] ***

(c) To promote fellowship and social intercourse among the members *** [and]

(e) To promote and encourage laws for the protection of the inhabitants of the area.

THE 19TH WARD Community Association is also exempt; its stated purposes include:

1) To create a conscious multiracial community where individual and cultural differences are not only tolerated but celebrated, and where people share a sense of community; [and]

2) To insure that the community, through the Association, determines and receives the kinds of high quality services it needs from public and private institutions.

THE CITY claims that these organizations are exempt because they receive government funds to administer programs benefitting low-income residents, and are thus charitable. This argument is not a strong one, as the announced purposes of both groups show that administering programs addressed to the needy is neither a primary nor a principal purpose of either one.[2] In addition, the GAGV itself has received government grants in support of some of its programs, many of which contain a strong secondary focus on the needs of the less than affluent.

The purposes of the GAGV are in general educational, charitable (in the sense of supplying social services free of charge) and relevant to the moral and mental improvement of the population, through the fostering of understanding between those of heterosexual and homosexual orientation. Accordingly, the GAGV has met its burden of proof, and is entitled to a declaration that it is entitled to a mandatory tax exemption under Real Property Tax Law §420-a, to the appropriate ancillary relief, and to the costs and disbursements in this action.

The Civil Rights Claim Under 42 USC § 1983:

THE CITY raises four defenses against the imposition of liability under 42 USC § 1983, which provides that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ***, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the person injured ***.

THE FIRST TWO of the City's defenses are patently frivolous, as they presuppose that the assessor is being sued in his individual capacity. The caption itself speaks to these; the Assessor is being sued as the chief decision maker of the City with respect to tax exemptions, and thus in his official capacity.[3] The City next claims that the complaint fails to plead the Assessor's acts were made pursuant to official policy or custom. No such requirement exists, and exactly this point was resolved against the City in this court's decision of February 19, 1993. The issue is res judicata.[4]

THE CITY'S final defense is that each exemption stands on its own, and that the Assessor was constrained by the categories of State law. This defense requires further discussion, for not all errors of law create constitutional issues; no discriminatory purpose could be found if, for example, the City's denial of the GAGV's application was consistent with other equally improper denials, all resting upon an indefensibly fragmented interpretation of the Real Property Tax Law's categories. Such facts would support only the inference that the City routinely misconstrues the statute.

IT APPEARS from the record, however, that only the Alliance suffered from this misconstruction. As was discussed above, the neighborhood advocacy groups granted tax exemptions cannot be considered charitable merely because they receive some money to service the needs of low-income residents. To hold as much would be to eliminate the requirement that the group be organized or conducted primarily or principally for tax-exempt purposes. The stated purposes of neither organization fit within the narrow categories advanced by the City.

THE RECORD also shows that the City has granted tax-exempt status to a public broadcasting station (WXXI) and to several organizations which are at least as much counselling and advocacy groups as medical ones (Planned Parenthood, the Drug and Alcohol Council, and Cancer Action, the Association for the Learning Disabled, the Genesee Valley Heart Association). The bases for these exemptions are not shown, but the organizations do not fall within the permissive sections of the Real Property Tax Law, and the exemptions could not be justified under the interpretation of the statute that the City, in essence, claims has been consistently applied to all applicants.

MOREOVER, the City's own position on the GAGV's ineligibility has shifted; at first the rejection was said to be based on the absence of formal curriculum and students; then the Alliance was told it was ineligible because of its advocacy focus; finally, it was told that other advocacy groups were in fact charitable organizations. These sound very much like after-the-fact rationalizations.

The inference of discrimination would not be raised were there any showing that the erroneous interpretation of Real Property Tax Law §420-a was in fact the City's standard for deciding applications. However, it seems clear that all other applications were correctly weighed according to the broader view taken by the Court of Appeals.

There is only one reasonable explanation for the Assessor's denial of the GAGV's application: that the GAGV was denied a tax exemption because the Assessor (and the City) saw support, education and advocacy for the gay and lesbian community in a different light than it did support, education and advocacy for, e.g., residents of the 14621 or 19th Ward neighborhoods.

THE OTHER explanations offered by the City are unsatisfactory and unsupported by the record. Thus, the GAGV's application received discriminatory treatment on the basis of the character of its membership and the content of its speech, clear denials of its Constitutional rights. As the Assessor was the person whose acts as to tax exemptions may fairly be said to express and delineate municipal policy (**see, generally, City of St. Louis v Praprotnik**, 485 US 112, 123; **Rookard v Health and Hospitals Corp.**, 710 F2d 41, 45 n 3 [2d Cir]), his discriminatory act renders the City liable under 42 USC § 1983.

ONCE A violation of 42 USC § 1983 is found, there is a presumption in favor of an award of attorneys' fes to the successful party (**Annunziato v The Gan, Inc.**, 744 F2d 244, 253 [2d Cir]). Such fees are not punishment but compensation to encourage the bringing of civil rights claims (**Coalition for Basic Human Needs v King**, 691 F2d 597, 602 [1st Cir]). When an officer is sued in his or her official capacity, no defense can be raised as to the officer's good faith (**Hutto v Finney**, 437 US 678, 693-700; **Coalition for Basic Human Needs v King, supra**; **see, generally, Cohen v West Haven Bd. of Police Com'rs**, 638 F2d 496, 504 [2d Cir]); only in cases where the defendant is innocent of real responsibility and made prompt and reasonable efforts to avoid or settle the lawsuit should attorneys' fees be denied (**Annunziato v The Gan, Inc., supra**, 744 F2d at 253-254).

NONE OF THESE special circumstances are present here; indeeds, the City's actions have partaken of the obstructionist. The court will entertain a motion under 42 USC § 1988 to determine the amount to be awarded. Proof will be required of the reasonableness of the fees demanded, and the City will be given an opportunity to be heard on that issue.

Submit order.

FOOTNOTES

1. Although the GAGV contests the propriety of both discovery demands, it has supplied the City with the requested financial records.

2. It should be noted that Group 14621's attorney, in papers drafted for a suit to force a tax exemption, characterized the organization's purpose as "charitable.". This is hardly dispositive, and is not supported by a reading of the Group's papers or capable of justifying the City's decision to grant the exemption before the question was litigated.

3. At oral argument on the motion to amend the complaint the City suggested that the Board of Assessment Review was the property party to be sued. The City has not raised this issue in connection with the present motion, and, as noted in this court's earlier decision, the Board could have been added as a party on the court's own motion. The addition would be merely technical; no conceivable difference in the City's defense would result from it.

4. In that decision this court stated that the defense "is simply wrong, and rests on a discussion of case law so selective as to be misleading. Monell v New York City Dept. of Social Services (436 US 658), the sole case cited, explicitly declined to set out the boundaries of municipal liability, and it is clear from subsequent cases that they may be liable for acts pursuant to policy or custom or for single acts 'by the highest officials responsible for setting policy in that area of the government's business' (City of St. Louis v Praprotnik, 485 US 112, 123). As the City Assessor is charged with determining applicants' entitlement to property tax exemptions, his rejection of GAGV's application might well subject the City to liability if found to be discriminatory." The City's answer, once again, cites Monell as if it exhausted the range of municipal liability and does not discuss the holding in Praprotnik.

9th Circuit

Life-Size Scenes of Jesus In San Diego Park Upheld as Free Speech

FROM U.S. LAW WEEK

SAN FRANCISCO — Chalk up another win for religious displays in traditional public forums. The U.S. Court of Appeals for the Ninth Circuit here has ruled that San Diego's allowing the Christmas season display in Balboa Park of life-sized statuary depicting scenes from the life of Jesus Christ doesn't violate the Establishment Clause. (Kreisner v. San Diego, CA 9, No. 90-55354, March 3, 1993.)

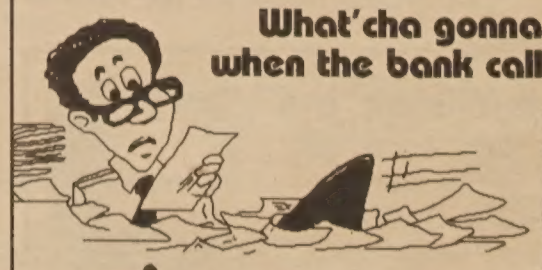
The 1,200-acre Balboa Park has multiple uses, including the famous zoo. The display in question has been set up in an open-air amphitheater by a private group for six weeks each year since 1953. Seven of the eight scenes include signs with gospel messages.

In rejecting an Establishment Clause challenge to the display, the court applied the three-part test of Lemon v. Kurtzman, 403 U.S. 602 (1971). It found that the decision to allow the display has the legitimate secular purpose of promoting freedom of expression in a public forum, satisfying the test's first prong. The third prong was met because there was no "appreciable" institutional entanglement with religion.

THE BULK OF THE COURT'S ANALYSIS WAS UNDER Lemon's second prong, which it said inquires whether placement of the "overtly religious" display on public property "represents government endorsement of religion."

Quoting from a recent Sixth Circuit opinion, the court found that the city's permitting the display could not be fairly interpreted as an endorsement of religion by a "reasonable" observer, that is, one who knows that the park is a traditional public forum allowing open access to speakers on a first-come, first-served basis.

The presence of "structural symbols of government" emphasized in a dissent was discounted by the majority: "It seems axiomatic to the public forum principle that we view messages expressed there as those of the actual speakers."



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Circulars Distributed in Curbside Racks

High Court Ruling in Cincinnati Case Affirms Shield for Commercial Speech

WASHINGTON, D.C. — The U.S. Supreme Court reinforced the constitutional shield protecting commercial speech against government regulation.

The justices ruled 6-3 that the city of Cincinnati violated the First Amendment's guarantee of free speech when it said commercial circulars couldn't be distributed in curbside racks while conventional newspapers could.

The case had been closely watched by business advocates, because it offered the High Court an opportunity to clarify what level of protection is afforded to so-called commercial speech, which includes advertising. But the majority went out of its way to emphasize that the ruling applied only to the particular circumstances in Cincinnati, and shouldn't be applied too broadly.

THE CASE AROSE from the city's decision in 1990 to limit the number of news racks on its sidewalks because of concerns that they created safety hazards and were unattractive. The city ordered publishers of giveaway magazines on real estate and adult educational opportunities to remove a total of 62 racks, but it didn't limit ordinary newspapers similarly. There were between 1,500 and 2,000 racks in the city.

The magazine publishers sued, complaining that they were unlawfully singled out. Two lower courts agreed with the publishers, and the High Court affirmed those rulings.

IN AN OPINION written by Justice John Paul Stevens, the majority reiterated that commercial speech generally deserves less constitutional protection than expression not motivated by profit. But Cincinnati failed to justify its distinction between commercial circulars and conventional newspapers, Justice Stevens wrote. The giveaway magazine racks aren't more harmful "and have only a minimal impact on the overall number of newsracks on the city's sidewalks," he added.

Justice Stevens observed that it isn't easy to distinguish between the giveaway circulars, which may contain valuable information, and ordinary newspapers, which include advertising and are designed to earn money for their publishers. But having raised the problem, he declined to attempt to resolve it. He said that Cincinnati's news rack policy was so clumsy that the High Court didn't have to re-examine its jurisprudence in the area to strike down the city's policy.

STILL, DESPITE its narrowness, the majority opinion "serves warning that distinctions between commercial and noncommercial speech must be done carefully," said Robert O'Neil, a First Amendment scholar at the University of Virginia. In some recent decisions, the High Court had seemed to drift toward giving commercial speech less protection, he added, but yesterday's ruling reasserted the value of such profit-oriented communication.

Moreover, the Stevens opinion casts doubt on other forms of government favoritism, such as exemptions from some state taxes, afforded news and information media, said Timothy Dyk, a Washington lawyer who has represented media clients.

"THE CASE RAISES a lot of important questions about favored treatment for the media," he added, "but it doesn't provide the answers." The High Court "is going to have to come back to it again," he predicted.

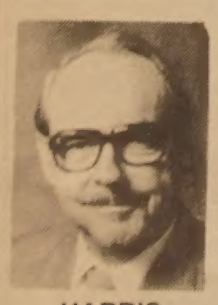
Major newspaper companies, including Dow Jones & Co., publisher of The Wall Street Journal, had urged the justices in a separate brief to rule that purely commercial publications should get First-Amendment protection to use news racks, but not as much protection as newspapers.

Chief Justice William Rehnquist filed a dissent, which was joined by Justices Byron White and Clarence Thomas. The dissenters said Cincinnati's aim of diminishing sidewalk clutter was legitimate, and that there was nothing wrong in moving toward that goal by eliminating one category of news racks. **(Cincinnati vs. Discovery Network Inc.)**

From The Wall Street Journal

Like Your Passport Photo

The Immigration and Naturalization Service (INS) will begin testing the effectiveness of biometrics technology to process frequent business travelers at U.S. airports. Early in 1993, INS plans to initiate the program at John F. Kennedy International and Newark International airports. Biometrics technology uses physical characteristics, such as fingerprints, hand geometry or optical scans to establish and confirm an individual's identity. Participation is voluntary for frequent travelers. The goal is to enroll at least 50,000 travelers.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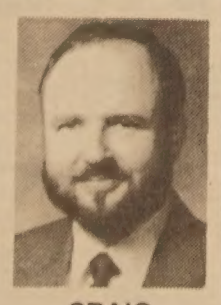
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ABA Litigation Section Poll

In-House, Outside Counsel Working To Curb Costs

CHICAGO — Seventy-five per cent of corporate lawyers last year asked the outside law firms they retained to freeze or reduce hourly rates, and nearly all firms complied, according to a new survey conducted by the American Bar Assn. Section of Litigation Committee on Corporate Counsel.

However, 80% of corporate lawyers say they would actually be willing to pay **higher** legal bills if law firms would charge a predictable flat rate for services instead of billing by the hour.

The survey of more than 1,100 ABA Corporate Counsel Committee members reports that interest in alternative billing methods, such as flat fees, has increased in the past eight years, but more than 70% of all respondents still believe that the hourly billing system works well.

The 229 attorneys responding to the survey were almost evenly divided between inhouse (117) and outside (112) counsel.

"THE SURVEY gives both inhouse and outside counsel the opportunity to form a shared understanding about the variety of alternative billing arrangements that exist and what kind of experiences people have had with them," said Nancy McCready Higgins, corporate counsel with the Boeing Co. and co-chair of the committee.

"If both inhouse and outside counsel feel they are partners in achieving results for the client, there is mutual satisfaction," said Edward Liebensperger, an attorney with Nutter, McClennen & Fish in Boston and co-chair of the committee.

In 1984, the ABA Litigation Section polled members of its Committee on Corporate Counsel and found they made little use of alternative billing methods, but a general willingness to try them. Attitudes of inside and outside counsel differed considerably on alternatives at that time.

RESULTS OF the 1992 survey are now available through the ABA Division for Communications and Public Affairs. Key findings include:

- **While more than** 70% of both inside and outside counsel believe that the hourly billing method "generally works well," alternative billing methods for corporate litigation received substantially greater acceptance in 1992 than in 1984.
- **Alternative billing** methods still represent a small percentage of total legal fees.
- **Inside counsel** differed with outside counsel on their alternatives of choice. Value-based fee was the least favorite of inside counsel, who preferred flat fees and the hourly rate against a cap or floor. Outside counsel, on the other hand, favored a modified contingent fee, hourly rate plus bonus and blended rate.
- **85% of inside** counsel were willing to risk paying higher legal fees in return for the certainty of flat fees.
- **Nearly all inside** counsel believe that outside lawyers' rates are too high today, a viewpoint with which only half of outside counsel disagreed.
- **More than 75%** of inside counsel requested outside counsel to freeze or reduce hourly rates in the past year; nearly all outside counsel complied.
- **Inside and outside** counsel agreed that three management techniques, (1) long-term relationship with counsel, (2) early joint development of case strategy, and (3) close management by inside counsel, were most effective in reducing overall costs.
- **More than two-thirds** of the outside lawyers considered the long-term relationship to be more important that securing results at the lowest total cost. In contrast, two-thirds of inside lawyers disagreed.
- **There was substantial** agreement that alternative dispute resolution methods are an effective way to reduce costs.
- **Inside counsel strongly** believed that a law firm's operational costs should be overhead and thus included within the hourly rate. Outside lawyers disagreed. Yet there was substantial agreement on 12 specific disbursements: five that were deemed appropriate to bill separately to the client, and seven that were not.
- **Inside counsel's most** common concern in 1984, the lack of billing detail, was no longer a significant issue, but the mistrust of outside counsels' bills persisted.
- **Outside counsel most** commonly complained that inside lawyers were "penny wise and pound foolish," and lacked an appreciation for the time and cost required for proper representation.

THE REPORT concludes that the rising hourly rate, the lawyers' positive experiences with alternative billing methods, and the dynamic economics of the legal marketplace, signal a greater acceptance of alternatives in the future.

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Supreme Court

Soldiers Faced With Foreclosure Given Break

WASHINGTON, — The U.S. Supreme Court gave a boost to people in the military who are threatened with foreclosure because of failure to pay taxes.

A unanimous High Court said that soldiers needn't demonstrate some type of hardship caused by their military service to take advantage of a federal law that sometimes allows them to avoid foreclosure on property on which they owe back taxes.

THE TEXT of the federal law is "unambiguous, unequivocal and unlimited" on this point, Justice John Paul Stevens said in his opinion for the High Court. And the intent of Congress, as shown by legislative debate and history, supports the same result, he added.

The ruling reversed a decision by Maine's top court, which had ruled against a career Army officer who tried to get some real estate back after municipal authorities took it away and sold it. (**Conroy vs. Aniskoff.**)

Legal Assistants Form CLE Council

TULSA, OKLA. — The Board of Directors of the National Association of Legal Assistants recently announced establishment of a Continuing Education Council, designed to plan and coordinate all continuing education efforts of NALA. "The continuing education needs of legal assistants are significant and ongoing," said Karen Dunn, NALA president. "The career field is increasingly competitive and employers are raising their expectations of legal assistants' job qualifications and performance. "NALA's coordinated, continuing education efforts will provide the much needed support for legal assistants' professional growth." The council, comprised of six members, will be the nucleus of educational efforts by planning and coordinating all continuing education workshops, special publications and feature articles in **Facts & Findings**, NALA's quarterly magazine.

COUNCIL MEMBERS will consist of editorial board members, the educational development chairman, the CLA short course coordinator and the immediate past chairman of NALA's Certifying Board.

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Gun Dealers Ruled Liable in Indirect Sales to Minors

GUN DEALERS in California can be sued for injuries that result from the sale of firearms to adults who, with the dealers' knowledge, pass the weapons on to minors, a state appeals court has ruled.

The decision, similar to one by a Virginia jury early last year, lays out a duty of care on the part of gun dealers to make sure they don't sell firearms to individuals who are barred by federal law from buying them, such as minors, convicted felons, fugitives, drug users and the mentally ill.

BOTH CASES reflect a growing nationwide effort by gun-control advocates to seek court rulings broadening "liability for selling to high-risk buyers," says Judy Bonderman, staff attorney at the Washington-based Center for Prevent Handgun Violence, a gun control advocacy group.

So far, such rulings have been few and far between. But the California appellate decision is significant because it's the first in that state to declare gun dealers liable for the sale of guns to minors through "straw" purchasers and to sketch out how to determine whether dealers exercised sufficient care.

THE CASE involved a 9mm handgun sold to the grandmother of a 19-year-old boy in Arroyo Grande, Calif. The youth had been turned down at a dealership in December 1989 because he was not 21 years old, the federal minimum age for buying a handgun.

According to the court's opinion, the youth asked the dealer if his grandmother could buy the gun. Told that she could if she was legally qualified and didn't sell the weapon, the youth returned with her several days later to make the purchase. Not long afterward, the youth fired the gun while showing off at a party and killed a friend, whose family sued the dealer alleging wrongful death.

IN THE OTHER case involving the same issue, a jury in Virginia Beach, Va., in January 1992 awarded $105,000 in damages against a gun store that sold a MAC-11 semiautomatic assault pistol to a 15-year-old through his 37-year-old cousin.

According to Bonderman, after the two walked into the gun store together, the younger cousin handed over $281 in cash to his cousin, walked to the display cases and, point to the MAC-11, told the clerk, "That's the one I want." The older cousin then made the purchase and filled out the requisite forms.

The verdict in that case was not appealed, according to Bonderman.

BUT IN THE California case, plaintiffs did appeal a trial judge's decision to dismiss the suit. And on appeal, the Second Appellate District Court, in Ventura, reversed the trial judge and sent it back for trial.

In determining whether the store was liable, the appeals court ruled that jurors should take into account whether there was "forseeability of harm" at the time of the sale and how close the connection was between the transaction and the alleged harm, among other factors.

(**Hoosier vs. Randa**, 2nd Appellate District Court, Div. 6, Ventura, Calif., 2d Civ. No. B065031)

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Many Women Trial Lawyers Claim Discrimination by Clients

45% Said They Were Sexually Harassed

NEW YORK — Nearly 90% of women trial attorneys say clients discriminate against them on the basis of their sex, according to a national survey. The discrimination the women cited ranged from sexual harassment to a client's refusal to be represented in court by a woman, according to the survey by Prentice Hall Law & Business, a legal-publishing unit of Paramount Communications Inc.

THE SURVEY found that 45% of women trial attorneys have been sexually harassed by a client in the past five years. Harassment, as described by the women, ranged from being called "sweetie" to being groped sexually. At firms of 50 or more attorneys, 62% reported sexual harassment by clients.

While difficulties for women in the male-dominated legal profession are hardly new, the survey's focus on clients' attitudes illustrates a problem that women say is especially troublesome. Law firms may embrace policies against discrimination and harassment within the firm yet resist trying to control the behavior of clients, who pay the bill.

Many women attorneys say they are likely to let a sexist remark or even blatant harassment go unreported rather than risk alienating a client.

"IT IS TRICKY to deal with," said Colleen McMahon, a partner at New York law firm Paul Weiss Rifkind Wharton & Garrison. "There is a fear of compromising the business relationship ... There is also the fear that the firm will choose the client's side over the attorney's."

Of the women surveyed, only 11% said that sexual discrimination from clients isn't a problem for women trial lawyers. And 89% said that the lack of women in influential positions at client companies has hurt women attorneys' business opportunities. That compares with 50% who said their business opportunities had been harmed by the unwillingness of male law firm partners to act as mentors.

CLIENTS' attitudes toward women have improved over the years, said Roxanne Barton Conlin, a first female president of the Association of Trial Lawyers of America. But the Des Moines, Iowa, attorney added, "Women in the larger law firms, especially with corporate clients, are having trouble still ... There is this attitude that if you want someone tough and strong to represent you in court, you can't rely on a woman. It's plainly ridiculous."

IN THE SURVEY, women litigators said that older, white men were the clients most likely to be uncomfortable dealing with women. And women who were surveyed said clients' biases can influence the decisions of senior male partners, resulting in women being kept off certain cases, for instance.

The survey also found that 75% of women litigators believe they are held to a higher standard of performance than their male counterparts.

"Women have to work harder in overcoming the natural uncertainty that clients have in dealing with any attorney for the first time," said Ellen R. Nadler, a partner at New York law firm Kramer, Levin, Naftalis, Nessen, Kamin & Frankel.

Examining their own business prospects, 35% of the women trial lawyers in the survey said their opportunities for business development were severely limited compared with those of their male counterparts; 55% said their opportunities were somewhat limited.

The survey also found that 55% of the women litigators reported instances of sexual harassment in their work in the past five years, similar to findings in other recent studies.

In addition to harassment by clients, 56% said they had been harassed by law firm colleagues, 56% by opposing counsel, 31% by judges and 10% by courthouse personnel.

FROM THE WALL STREET JOURNAL

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National Association of Consumer Bankruptcy Attorneys

'Formed As Response To Legislative Attacks On Bankruptcy Code'

McLEAN, VA. — The National Association of Consumer Bankruptcy Attorneys (NACBA), a fast-growing organization with members in 35 states, was formed last August as a direct response to legislative attacks on the Bankruptcy Code. According to NACBA President Ike Shulman, "It appeared that the voices of consumer debtors were not being heard in the legislative process. Our organization was formed to ensure that the rights of consumer debtors are protected."

NACBA has reviewed S. 540 and has found some changes that would improve the bankruptcy system, while other changes would diminish the protection now afforded to debtors.

1. Chapter 13 Debt Limits: Shulman stated, "This bill will increase Chapter 13 debt limits and make Chapter 13 repayment plans available to many debtors who are presently forced to file a Chapter 7 liquidation case, a very costly Chapter 11 case, or are unable to file for bankruptcy protection because the existing choices are not viable."

2. Exemption Amounts: Shulman stated, "The bill will increase the value of property that may be exempted and kept by the debtor, to account for 15 years of inflation since the adoption of the Bankruptcy Code in 1978."

3. Curing of Mortgage Defaults: "The bill will enable individuals to save their homes from foreclosure judgments by repaying their mortgage debts through Chapter 13 plans," said Shulman.

4. Household Goods Protection: According to Shulman, "The bill removes the protection from seizure of certain personal belongings that debtors now have. Under the bill the debtor will no longer be able to protect family heirlooms and personal jewelry such as engagement rings. The proposal would allow high-interest finance companies to intimidate the least sophisticated consumer debtors, through the threat of the loss of their household belongings, and would force them to repay debts that would otherwise be wiped out. The Bankruptcy Code was adopted to debtors with a 'fresh-start,' and this provision will undermine this fundamental bankruptcy concept."

5. Loans Used to Pay Taxes: Shulman stated, "The proposal would add a nondischargeable debt category for loans used to pay federal taxes. Under present law, the categories of nondischargeable debts are restricted to areas involving the protection of governmental interests or involving wrongful conduct by the debtor, such as fraud. This bill will expand nondischargeability to include loans used to pay taxes. The Bankruptcy Code should not be changed to insulate credit card lenders from normal risks associated with their lending practices."

6. Protection For Cosigners: According to Shulman, "The bill will virtually eliminate the protection cosigners now have in Chapter 13 repayment plans. Under the bill, a creditor can sue a relative who cosigned for the debtor even though that debt is being paid in full through the Chapter 13 plan. This bill will result in more bankruptcy filings by relatives of debtors and fewer cosigned debts being paid in full through Chapter 13 plans. This change would benefit neither debtors nor creditors and would likely lead to conflict within families.

7. Lien-Stripping on Residential Real Property and Mobile-Homes. Shulman stated, "Lien-stripping would be virtually eliminated for residential real property and mobilehomes under this bill. Reducing secured claims to their actual value to the creditor is an underlying premise of the Bankruptcy Code. For example, the secured claim resulting from a mortgage is limited to the amount the lender would receive if it foreclosed on the house. S. 540 would prohibit this type of "strip-down" for residential real property and mobile-homes, except in very rare cases. Throughout the years of studies and hearings and which led to the adoption of the Bankruptcy Code, the need for this important intended change from the old Bankruptcy Act was repeatedly emphasized. This proposal would begin a serious erosion of that basic element of the Code."

SHULMAN CONCLUDED, "While minor changes and clarifications are needed, on the whole we believe in Bankruptcy Code has worked well. It has enabled millions of ordinary Americans to stabilize their lives and obtain a 'fresh-start.' Our members do not believe that an overhaul of the Code is necessary, and we have seen no evidence to the contrary."

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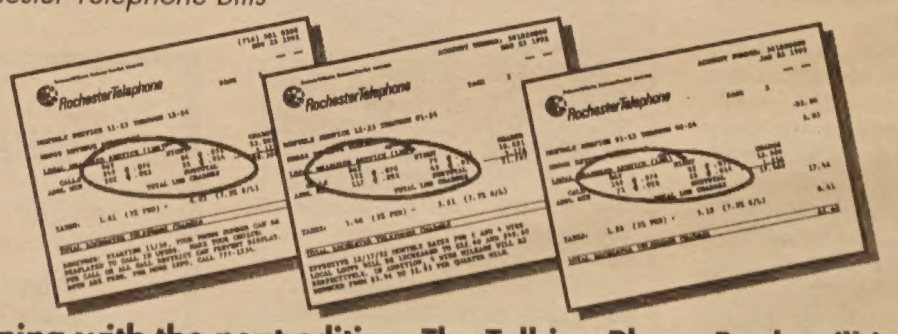

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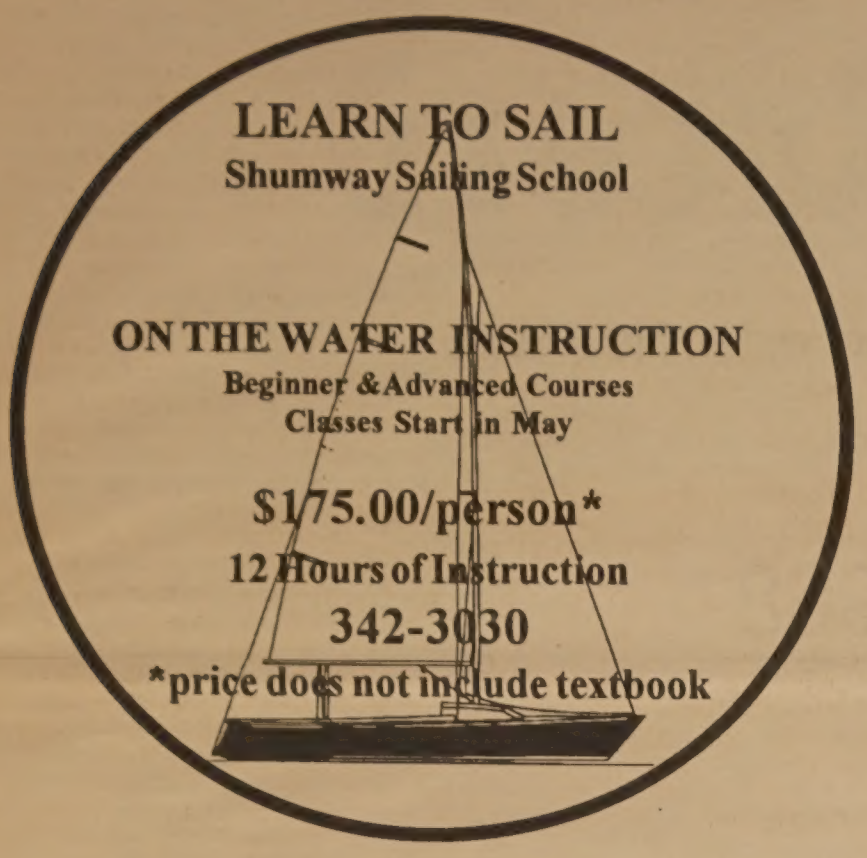

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'It's Key to Early Break In Crime Cycle'

CHICAGO — A game-based computerized literacy training program is saving Arizona millions of dollars and diverting felony probationers into educational achievement, including scholarship-funded college enrollment.

The program is described in the current issue of "Judges' Journal" by Frank X. Gordon Jr., former chief justice of the Arizona Supreme Court and now a practicing lawyer in Phoenix.

Gordon installed a Progressive Alphabet Literacy System (PALS) laboratory in a Tucson high school in 1987, as a pilot program for functionally illiterate probationers in that city. The laboratory was financed from funds legislatively earmarked for juvenile crime reduction.

PALS IS an interactive videodisc program designed by IBM Corp. Using game strategies, it encourages students to grasp reading fundamentals.

PROBATIONERS who test as functionally illiterate were required as a condition of probation to attend PALS laboratory classes one hour per day, five days per week, for 20 weeks. The laboratory was staffed by high school teachers and volunteers, and the high school had access to the lab for students viewed as drop-out risks and for adult literacy evening students.

The first group of probationers and at-risk students to complete the program increased their reading skill level by 2.8 years, reports Gordon. At the end of the program, each student had become a touch typist and reasonably skilled operator, "valuable, marketable job skills," he notes. School officials estimated that their dropout rate had been cut by a full five percent at the end of the first year.

THE SUCCESS of the program convinced Gordon to pursue it aggressively, and the court has equipped 31 labs in cities across the state. The state Department of Education has provided additional software that takes students to a high school graduate equivalence degree, and is cooperating with the courts in operating the Learn Labs.

Gordon says students enjoy the programs, and rarely are tardy or absent. He cites it as a boost to students' self-esteem and sense of accomplishment, and says the concentrated personal attention from teachers and the demanding program "forge a formula for success."

GORDON OFFERS personal testimonials to support the program, buttressed by IBM surveys showing that Colorado, with a population similar to Arizona's, could save $350 million by reducing its high school dropout rate by 5%.

The savings would accrue from reduced criminal justice expenditures, reduced government services to probationers and their families and increased tax revenue from productive citizens.

"The cost of a probation literacy program like Arizona's are not negligible, but the social costs of illiteracy are enormous ... Incarceration is an incredibly costineffective antidote," says Gordon.

ON THE ROAD

Driving Habits Can Cut Air Pollution

(NU) - Since automobiles are a major source of air pollution in most areas, your driving habits can either add to the problem or help solve it.

Consider adopting these anti-pollution habits:

1. Plan ahead. Combine several errands in one trip. Avoid driving during peak periods when stop-and-go traffic is at its worst. Try walking or bicycling for short errands.

2. Use an emergency service like MasterCard's RoadAssist, which quickly locates local towing companies via a toll-free number, 1-800-MC-ASSIST. The service is free to holders of the Gold and Business cards.

3. Ride share. If you own or manage a business, create incentives that encourage employees to carpool. Consider taking public transportation as an alternative to driving.

4. Travel light. The more weight your car carries, the less fuel-efficient it becomes. Take unnecessary items out of the trunk.

5. Don't let the engine idle. Turning off and starting an engine uses less gasoline than letting the engine idle for 30 seconds. Stop the engine if it is idling at a drive-up window or traffic jam.

6. Follow the owner's manual. The manual that comes with your car will recommend which grade of gasoline to use, how to shift gears and other ways you can keep your engine running at maximum environmental and economic efficiency.

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3rd Circuit:

It's Youth's Duty to Serve Community

PHILADELPHIA — Public high schools can require students to perform community service to graduate, a federal appeals court said, rejecting arguments that the requirement amounted to involuntary servitude.

Ruling on a case involving the Bethlehem, Pa., school district, the court also said the requirement didn't violate students' free-speech rights. The two students who sued claimed that mandatory community service forced them to "affirm the philosophy that serving others and helping the community are what life is all about."

THE RULING by the U.S. appeals court here is apparently the first federal appellate decision on schools' mandatory community service programs, which have grown in popularity in recent years.

Last year, the Maryland Legislature adopted such a program, to take effect statewide in the fall.

"Governments may require individuals to perform certain well-established 'civic duties,' such as military service and jury duty," as well as pro bono work by lawyers, the Third U.S. Circuit Court of Appeals said.

The community service program is primarily designed for the students' own benefit and education, notwithstanding some incidental benefit to the recipients of the services."

THE THREE-JUDGE panel noted that the Bethlehem students are allowed to choose where they will perform their 60 hours of service and can even come up with their own community-service project. The court said that if students had to work in programs that were in conflict with their beliefs, the requirement could raise free-speech concerns.

Eric R. Strauss, an Allentown attorney for the two students who sued the school district, said his clients don't oppose volunteer community service. "These aren't people who are saying we don't want to help anyone. That's not it at all. It's over the question of whether the government can force you to do that," Strauss said. He said a decision hasn't yet been made on whether to appeal the matter further.

BALTIMORE attorney Thomas A. Bowden of the Association for Objective Law, which filed a brief supporting the students, said he expects the court challenges to be filed in other parts of the country as well, as such programs become more common.

(**Lynn Ann Steirer, et al., vs. Bethlehem Area School District**, Third U.S. Circuit Court of Appeals, 92-1359.)

Mass. Has Worst Drivers

A report by the Insurance Research Council found that Massachusetts drivers ranked first in rate of property damage and injury claims and had the worst rate of accidents in the nation — 9.24 for every 100 cars. The District of Columbia was second and New York third. Wyoming ranked last, with just 2.91 accidents per 100 cars.

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